



**THE ATTORNEY GENERAL
OF TEXAS**

AUSTIN 11, TEXAS

**PRICE DANIEL
ATTORNEY GENERAL**

January 12, 1948

Hon. Ernest O. Thompson, Chairman
Railroad Commission of Texas
Austin, Texas Opinion No. V-473

Re: Effect upon outstanding
certificates issued un-
der Article 911b, V.C.S.,
authorizing motor car-
rier operations in cer-
tain areas, as a result
of the consolidation of
the Cities of Pelly and
Goose Creek.

Dear Sir:

The facts which prompted your request for an
opinion in connection with the above captioned matter
are restated as follows:

On December 8, 1945, the area commonly
known as Baytown was annexed to and became
a part of the "home rule" City of Pelly
(City of Pelly v. Water Control District,
198 S. W. (2d) 450, Sup. Ct. 1946). There-
after, on the 27th of September, 1946, the
Railroad Commission of Texas issued its or-
der granting a specialized motor carrier
certificate of convenience and necessity
authorizing the transportation of certain
commodities from La Porte, Texas, and points
within a ten mile radius thereof, with the
exception of the corporate limits of Goose
Creek, to all points in Texas, and vice ver-
sa. At the time this order was entered Pel-
ly and Goose Creek were separate incorporat-
ed cities, but were contiguous to each oth-
er. Subsequently, on the 15th day of Febru-
ary, 1947, elections were held in the Cities
of Pelly and Goose Creek resulting in the
consolidation of Goose Creek with Pelly, the
latter being the larger city. The elections
resulting in the consolidation were held un-
der Article 1188, V.C.S., and records of the

same have been filed with the Secretary of State under Article 1192, V.C.S.

Based upon these facts the following question is presented:

As a result of the consolidation of Goose Creek with Pelly into one city, is the operator of the specialized motor carrier certificate in question now authorized to serve the area formerly embraced within the corporate limits of Goose Creek?

We assume for the purpose of this opinion that the consolidation of Goose Creek with Pelly was in accordance with the existing State laws on the subject.

Article 1188, V.C.S., specifically authorizes cities, such as Goose Creek and Pelly, to consolidate under one government and to take the name of the larger city. The term "consolidate" is defined by Article 1191, V.C.S., as meaning ". . . the adoption by the smaller cities of the charter and name of the larger of said cities, and the amendment of the charter of the larger cities so as to include in its boundaries the territory of the smaller city or cities so consolidated . . ." (Emphasis ours) As a result of the consolidation in question, the corporate existence of Goose Creek as a municipality became extinct. 1 McQuillin Municipal Corporation, Second Edition, Revised, 877, § 315.

Section 2 of Article 911b, V.C.S., expressly provides that ". . . nothing in this Act or any provision thereof shall be construed or held to in any manner affect, limit or deprive cities and towns from exercising any of the powers granted them by Chapter 147, Pages 307 to 318, inclusive of the General Laws of the State of Texas, passed by the 33rd Legislature, or any amendments thereto." A certificate issued by the Commission under Article 911b, supra, is subject to all the laws of this State governing cities and towns and their legal right to consolidate and expand by annexation of additional territory. Compare City of Wichita Falls v. Bowen, 143 Tex. 45, 182 S. W. (2d) 695 (1944). The certificate being subject to the laws respecting cities and towns, the restriction contained therein has now ceased to exist, because the area formerly included within the corporate limits of Goose Creek is now, as a

result of the consolidation, legally a part of the corporate limits of Pelly--a city authorized to be served under the certificate.

The restriction contained in the certificate excluding service within the corporate limits of Goose Creek does not, in our opinion, reflect an intention on the part of the Commission to prohibit service within this particular area in the event the Cities of Pelly and Goose Creek were consolidated. The grant of authority to a carrier by the Railroad Commission to serve a particular city (in this instance Pelly) contemplates the future growth and expansion of the city, not only through normal growth, but through annexation of additional territory and all other lawful means authorized by our State laws. See 1 Pond on Public Utilities 316, § 131.

Certainly it would not be presumed that the Commission intended in the event Goose Creek was consolidated with Pelly, as authorized by law, that the public transportation service authorized by the certificate would be available to the public in a portion of the consolidated city and not to the other portion. It would be extremely difficult, if not impossible, to police such an operation. To hold that the Commission intended such a result would be to hold that the Commission intended something here which we are informed has never been done in the entire history of the administration of the Texas Motor Carrier Law.

Based upon the above and foregoing, the question is accordingly answered in the affirmative.

The conclusion reached makes unnecessary a discussion of the second question presented by your request.

SUMMARY

The restriction contained in a certificate issued by the Railroad Commission authorizing service to and from the City of Pelly, but prohibiting service to or from the corporate limits of the City of Goose Creek, is nullified by the subsequent consolidation of the City of Goose Creek with the City of Pelly. As a result of the consolidation the operator of the certificate is authorized to

serve the entire City of Pelly, including
that portion formerly embraced in the cor-
porate limits of Goose Creek.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By *Charles D. Mathews*
Charles D. Mathews
Assistant

CDM:jt

APPROVED:

J. R. Greenhill

ACTING ATTORNEY GENERAL